

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JIM BROWN II, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JIM BROWN,

Respondent-Appellant,

and

TAMMY BROWN and NICHOLAS THACKER,

Respondents.

In the Matter of ZACHARY THACKER,
MARSHALL THACKER, and JIM BROWN II,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TAMMY BROWN,

Respondent-Appellant,

and

JIM BROWN and NICHOLAS THACKER,

Respondents.

UNPUBLISHED
November 9, 2004

No. 254733
Kent Circuit Court
Family Division
LC No. 02-262800-NA

No. 254750
Kent Circuit Court
Family Division
LC No. 02-262800-NA

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

In these consolidated appeals, respondents Jim Brown and Tammy Brown appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(c)(ii) and (g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The factual basis for both grounds was respondent father's abuse of Zachary and respondent mother's failure to provide a safe home for the children because she continued to reside with respondent father. The trial court found that respondent father had not taken responsibility for his actions and that, therefore, he placed the children at risk of harm. Although respondent father technically complied with the parent-agency agreement by attending individual counseling and domestic violence counseling, the trial court did not clearly err when it found that he had not taken responsibility for his actions and that this failure placed the children in danger, especially where his progress in domestic violence counseling was poor to minimal. The trial court also did not clearly err in finding that this condition could not be rectified and that respondent father would not be able to provide proper care and custody within a reasonable time. The psychological evaluation stated that treatment would not be successful unless respondent father displayed a legitimate desire to change. And there was no indication that respondent father would ever display a legitimate desire to change because he would not admit to the abuse.

Respondent mother's ability to rectify the conditions leading to adjudication and provide proper care and custody for her children was unfortunately inextricably linked with respondent father's inability to take responsibility for his actions. Because he was not able to do so, he was a danger to the children. Because respondent mother refused to live separately, she could not provide a safe environment for her children and, therefore, was unable to correct the conditions leading to adjudication or provide proper care and custody for her children.

Respondent mother argues that she received contradictory messages from her caseworker and may have misunderstood that she needed to separate from respondent father. At every hearing after the first, the caseworker stated that respondent mother would have to choose between her children and her husband. If respondent mother was initially confused, there was ample time for her to take action after the caseworker explicitly stated respondent mother's choices.

Finally, we find that the trial court did not clearly err in determining that termination was not clearly against the children's best interest. *Trejo, supra* at 364-365. Neither parent could provide a safe home for the children because respondent father refused to accept responsibility

for the abuse, and, therefore, presented a danger to the children, and respondent mother would not separate from him.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski